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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,976	10/10/2003	George P. Hansen	TRIA:007CP1	2973

7590 02/24/2005

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EXAMINER

SELLERS, ROBERT E

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,976

Applicant(s)

HANSEN ET AL.

Examiner

Robert Sellers

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 115-127 and 173-198 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 115-127 and 173-198 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/10/2003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

1. The specification on page 1, line 14, after "August 14, 2001," should be amended to update the status of parent application no. 09/939,204 as U.S. Patent No. 6,632,860.

2. The Office actions from allowed parent application no. 09/939,204 have been inadvertently deleted. It would be greatly appreciated if the Notice of Allowability, Examiner's amendment and any attached forms such as the Notice of References Cited, Form PTO-892 mailed May 23, 2003 from the parent application be included with the response to the election of species espoused hereinbelow.

3. This application contains claims directed to the following patentably distinct species of the claimed invention:

- (a) The amine curing agents.
- (b) The epoxide-containing toughening agents.
- (c) The epoxy resins.
- (d) The rubber toughening agents.
- (e) The presence or absence of the (optional) glass fiber thixotrope and impact toughening agent. (According to page 15, lines 22-23, the glass fiber is both a thixotrope and an impact toughening agent.) Independent claim 115 and claims 116-127, 173 and 174 dependent thereon requires its presence. Independent claim 175 and claims 176-198 dependent thereon designates this material as optional.
- (f) The pigments.

(g) The presence or absence of the optional ultraviolet light stabilizers, wherein if its presence is elected, a particular species thereof is identified. Independent claim 115 and claims 116-127, 173 and 174 designates the stabilizer as optional. Independent claim 175 and claims 176-198 dependent thereon requires its presence.

(g) The presence or absence of the optional abrasive aggregate, wherein if its presence is elected, a particular species thereof is identified.

(h) The presence or absence of the optional fire retardant, wherein if its presence is elected, a particular species thereof is identified.

The following components are defined in independent claim 175 and claims 176-198 dependent thereon. This election involves the selection of the presence or absence of these ingredients because independent claim 115 and claims 116-127, 173 and 174 dependent thereon do not define them.

(i) The presence or absence of the corrosion inhibitor, wherein if its presence is elected, a particular species thereof is identified.

(j) The presence or absence of the moisture penetration inhibitor, wherein if its presence is elected, a particular species thereof is identified.

4. The election of a particular table such as Table 1a on page 19 of the specification would satisfy the election of species requirement, or the election of individual species within a table could be provided.

5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species within each of items (a) to (j) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 115-127 and 173-198 are generic.

A reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Robert M. O'Keefe on February 15, 2005 to request an oral election to the above election of species requirement, but did not result in elections being made. The reply to this requirement to be complete must include elections of species within each of items (a) to (j) hereinabove to be examined even though the requirement be traversed (37 CFR 1.143).

Upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Sellers whose telephone number is (571) 272-1093. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



Robert Sellers
Primary Examiner
Art Unit 1712